



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

February 11, 2008

Mr. Van A. Thompson, Registered Agent
T & W Putnam Developments, LLC
765 Davenport Lane
Castalian Springs, Tennessee 37031

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5039

Subject: DIRECTOR'S ORDER NO. WPC08-0010
THE LANDINGS AT FALLING WATER RIVER
PUTNAM COUNTY, TENNESSEE

Dear Mr. Thompson:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Cookeville
DWPC – Compliance File
OGC



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

February 11, 2008

Mr. James D. Shockley, Registered Agent
J.D. Shockley Construction, LLC
183 Hidden River Avenue
Sparta, Tennessee 38583

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5022

Subject: DIRECTOR'S ORDER NO. WPC08-0010
THE LANDINGS AT FALLING WATER RIVER
PUTNAM COUNTY, TENNESSEE

Dear Mr. Shockley:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

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**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	
)	
T & W PUTNAM DEVELOPMENTS, LLC)	DIVISION OF WATER
and J.D. SHOCKLEY CONSTRUCTION,)	POLLUTION CONTROL
LLC)	
)	
)	
RESPONDENTS)	CASE NUMBER WPC08-0010
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the “director” and the “division” respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “commissioner” and the “department” respectively).

II.

T & W Putnam Developments, LLC (hereinafter “Respondent Putnam”) is an active limited liability company licensed to conduct business in the State of Tennessee and is the owner/developer of a residential subdivision described as The Landings at Falling Water River, located at the intersection of Luke Lane and Burgess Mill Road in Putnam County (hereinafter the “site”). Service of process may be made on Respondent Putnam through its Registered Agent, Van A. Thompson, at 765 Davenport Lane, Castalian Springs, Tennessee 37031.

III.

J.D. Shockley Construction, LLC (hereinafter “Respondent Shockley”) is an active limited liability company licensed to conduct business in the State of Tennessee and is contracted by Respondent Putnam to conduct construction activities at the site. Service of process may be made on Respondent Shockley through its Registered Agent, James Dean Shockley, at 183 Hidden River Avenue, Sparta, Tennessee 38583.

JURISDICTION

IV.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are “persons” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondents have violated the Act.

VI.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

VII.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VIII.

Hudgens Creek and its unnamed tributary are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, livestock watering and wildlife and irrigation. Additionally, Hudgens Creek is listed as impaired for habitat loss due to alteration in streamside or littoral vegetative cover, and loss of biological

integrity due to siltation, and *Escherichia coli* due to sanitary sewer collection system failure, discharges from municipal separate storm sewer systems (MS4), and pasture grazing.

FACTS

IX.

On February 20, 2007, per Respondent Putnam's request, division personnel from the Cookeville Environmental Field Office (CK-EFO) met Respondent Putnam and Respondent Putnam's representatives at the site to discuss proposed alterations to Hudgens Creek, an unnamed tributary, and an associated spring. These alterations included the removal of small dams that had previously been installed for livestock watering, and the installation of utility line and road crossings. The division requested that Respondent Putnam submit an application for written authorization under an appropriate ARAP for the proposed activities.

X.

On February 14, 2007, Respondent Putnam submitted a NOI, SWPPP and appropriate fee requesting coverage under the TNCGP for construction activities at the site. The division determined that the SWPPP was incomplete, and in correspondence dated February 21, 2007, informed Respondent Putnam that a completed SWPPP would need to be submitted before a Notice of Coverage (NOC) could be issued. A revised SWPPP was submitted on February 22, 2007.

XI.

On March 1, 2007, Respondent Putnam submitted General ARAP applications for planned alterations to the unnamed tributary and the spring located on site, for minor road

crossings over the unnamed tributary and spring, and for utility line crossings of Hudgens Creek at Lovelady Road and the unnamed tributary at Luke Lane and also at Blue Water Drive.

XII.

On March 7, 2007, the division issued coverage under the TNCGP for construction activities at the site.

XIII.

On March 13, 2007, the division issued written authorization under the appropriate General ARAPs for the activities proposed on March 1, 2007.

XIV.

On November 8, 2007, division personnel conducted a site inspection and noted that Erosion Prevention and Sediment Control (EPSC) measures at the site were inadequate, unmaintained, or had not been installed in accordance with the SWPPP. Large amounts of sediment had migrated into Hudgens Creek and its unnamed tributary, forming deposits 12-27 inches in depth, resulting in a condition of pollution in both water bodies. The NOC was not posted on site, nor was the SWPPP available for review as required by the TNCGP.

XV.

On November 14, 2007, the division issued a Notice of Violation (NOV) to Respondent Putnam and Respondent Shockley for the violations observed during the November 8, 2007, site inspection. The Respondents were instructed to install and maintain EPSC measures in accordance with the SWPPP to prevent further sediment loss to Hudgens Creek and its unnamed tributary. The

Respondents were further instructed to submit a written response describing the corrective measures to be implemented to bring the site into compliance.

XVI.

On November 21, 2007, Respondent Putnam telephoned the division to discuss the violations stated in the NOV and corrective actions required to bring the site into compliance. Respondent Putnam was again instructed to submit a written response describing the corrective measures to be implemented in order to bring the site into compliance. Respondent Putnam was also informed that written authorization under the General ARAP for Sediment Removal for Stream Remediation would be required prior to removing the sediment from Hudgens Creek and its unnamed tributary.

XVII.

On November 28, 2007, Respondent Putnam submitted a written response to the November 14, 2007, NOV. Respondent Putnam stated that evaluation of EPSC measures at the site had been initiated and indicated willingness to address the EPSC deficiencies noted in the NOV. He also stated that failure of the silt fencing already installed was an unavoidable accident.

XVIII.

On December 11, 2007, division personnel conducted a compliance inspection at the site and noted that straw matting had been placed on the slope along Thompson Green Lane and a portion of the silt fencing at the Blue Water Road crossing of the unnamed tributary had been

repaired. Division personnel noted that the remaining EPSC measures continued to be inadequate and that many had not been installed properly or were in need of repair. It was also noted that sediment discharges to the unnamed tributary and to Hudgens Creek were continuing. The NOC was not posted on site, nor was the SWPPP available for review.

XIX.

On January 15, 2008, division personnel conducted a compliance inspection at the site and noted that sediment removed from the unnamed tributary had been placed on the streambank without adequate EPSC measures installed. A subsequent file review determined that written authorization under the General ARAP for Sediment Removal for Stream Remediation had not been requested or issued prior to removal of the sediment from the stream. The NOC was not posted on site, nor was the SWPPP available for review. Division personnel noted little improvement in site-wide ESPC measures.

XX.

During the course of investigating the Respondents' activities, the division incurred damages in the amount of ONE HUNDRED EIGHT DOLLARS AND SEVENTY SEVEN CENTS (\$108.77).

VIOLATIONS

XXI.

By failing to comply with the terms and conditions of the TNCGP, and failing to obtain authorization under an ARAP prior to engaging in sediment removal for stream remediation

activities as described herein, the Respondents have violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXII.

By causing a condition of pollution to Hudgens Creek and its unnamed tributary, the Respondents have violated T.C.A. §69-3-114(a):

§69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the

damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents.

1. The Respondents shall, within 7 days of receipt of this ORDER AND ASSESSMENT, establish and maintain effective EPSC measures on-site, such that no additional sediment is allowed to enter waters of the state.
2. The Respondents shall, within 14 days of receipt of this ORDER AND ASSESSMENT, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondents shall submit this written documentation and photographic evidence to the Water Pollution Control manager at the CK-EFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506.
3. The Respondents shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit for review and approval, a Corrective Action Plan (CAP) for the removal of accumulated sediment from Hudgens Creek and its unnamed tributary, and the restoration of impacted streams and drain ways. This CAP shall, at a minimum, include details

regarding the manual methods to be used to remove the accumulated sediment and a time frame to complete the work. The written approval of the CAP by the division will constitute authorization for sediment removal from the affected areas as well as authorization for restoration of the affected areas of Hudgens Creek and its unnamed tributary and no additional ARAP coverage is required. The CAP shall be submitted to the Division of Water Pollution Control manager at the CK-EFO. Any deficiencies to the CAP shall be corrected by the Respondents within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Water Pollution Control manager at the CK-EFO to the address listed in item 2, above.

5. The Respondents shall, within 45 days of division approval, complete the activities outlined in the approved CAP and submit notification of completion to the Water Pollution Control manager at the CK-EFO at the address listed in item 2, above.
6. The Respondents shall pay a CIVIL PENALTY of FIFTY ONE THOUSAND DOLLARS (\$51,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of THIRTEEN THOUSAND DOLLARS (\$13,000.00).
 - b. If the Respondents fail to comply with Part XXIII, item 1 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND SIX HUNDRED DOLLARS (\$7,600.00), payable within 30 days of default.
 - c. If the Respondents fail to comply with Part XXIII, item 2 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of THREE

THOUSAND EIGHT HUNDRED DOLLARS (\$3,800.00), payable within 30 days of default.

- d. If the Respondents fail to comply with Part XXIII, item 3 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND SIX HUNDRED DOLLARS (\$7,600.00), payable within 30 days of default.
 - e. If the Respondents fail to comply with Part XXIII, item 4 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND SIX HUNDRED DOLLARS (\$7,600.00), payable within 30 days of default.
 - f. If the Respondents fail to comply with Part XXIII, item 5 above in a timely manner, the Respondents shall pay a CIVIL PENALTY in the amount of ELEVEN THOUSAND FOUR HUNDRED DOLLARS (\$11,400.00), payable within 30 days of default.
7. The Respondents shall pay DAMAGES to the division in the amount of ONE HUNDRED EIGHT DOLLARS AND SEVENTY SEVEN CENTS (\$108.77).

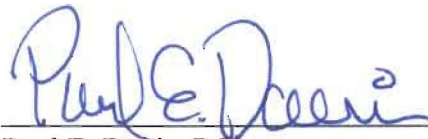
The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a

minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondents are advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 11th day of February 2008.

A handwritten signature in blue ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this ORDER AND ASSESSMENT. In order to secure review of this ORDER AND ASSESSMENT, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition

within thirty (30) days of receiving this ORDER AND ASSESSMENT. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this ORDER AND ASSESSMENT, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis,

Director, Division of Water Pollution Control, Tennessee Department of Environment and
Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.